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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. [redacted]76

HOWARD DORTCH,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

RODES K. MYERS,
Counsel for Petitioner.

MYERS AND LOGAN,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 806

HOWARD DORTCH,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Howard Dortch, in support of his petition for a writ of certiorari to review the final judgment of the United States Court of Appeals for the Sixth Circuit, entered April 17, 1953, affirming his conviction for violation of U. S. C. A. 18, Sec. 1992 on October 24, 1949, respectfully shows:

A

Summary Statement of the Matter Involved

This proceeding originated when the petitioner was indicted by a Grand Jury in the United States District Court for the Western District of Kentucky at its February Term, 1950, at Owensboro, Kentucky, the number of said Indictment being 5136. The petitioner under this indictment was jointly indicted with one Ewin Riley. On No-

vember 14, 1950 in the Bowling Green Division of the United States District Court for the Western District of Kentucky, both Riley and the petitioner, Dortch, were tried, after the indictment having been called for trial at four successive previous terms of the District Court. Riley, as well as the petitioner, were formally arraigned under this indictment, the Jury was duly impanelled and sworn and evidence was offered and heard by both sides. The Jury subsequently returned its verdict, finding Riley guilty and no verdict as to the petitioner, Dortch, and orally reported to the Court, through its foreman, that they were unable to agree as to the petitioner, Dortch. Thereupon, the Court discharged the Jury. On May 19, 1952 a Grand Jury of the Owensboro Division of the United States District Court for the Western District of Kentucky returned indictment No. 5238, charging the petitioner, Dortch, with the same offense. Petitioner, Dortch, was arraigned under indictment No. 5238 on September 8, 1952 and tried on September 17th of 1952. He was found guilty and his punishment fixed at ten years in the penitentiary.

The Conviction and Subsequent Proceedings

Upon these facts the trial court entered its final judgment on the 18th day of September, 1952, and judgment and sentence were pronounced on the 18th day of September, 1952.

An appeal was taken to the Court of Appeals, Howard Dortch *vs.* United States of America, #11736. Upon appeal, in the court below, petitioner contended:

(1) The trial of this petitioner under indictment No. 5238 violated and prejudiced his rights under the Fifth Amendment to the Constitution of the United States by placing the petitioner in jeopardy twice for the same offense. This petition is filed within thirty days next after final judgment on April 17, 1953.

B

Statement of the Jurisdiction of this Court

(1) *Statutory Provision Believed to Sustain the Jurisdiction.*

The jurisdiction of this Court is invoked under sections 1254 and 2101 of Title 28 of the United States Code.

(2) *The Date of the Judgment to be Reviewed.*

The judgment of the Court of Appeals for the Sixth Circuit affirming the conviction of petitioner was entered April 17, 1953. This petition, with supporting brief, and the certified record, are filed within thirty days next after final judgment.

(3) *Statement of the Nature of the Case and the Rulings of the Court of Appeals Bringing the Case Within the Jurisdiction of this Court.*

The nature of the case has been heretofore stated. The Court of Appeals ruled:

(1) That the trial of the petitioner under indictment #5238 did not violate or prejudice his rights under the Fifth Amendment of the Constitution of the United States by placing him in jeopardy twice for the same offense.

(4) *Cases Believed to Sustain the Jurisdiction of this Court.*

This court is vested with jurisdiction under the statutory provisions heretofore specified. The cases submitted by petitioner as the basis for the exercise of such jurisdiction, to review the judgment below, are cited hereafter in connection with petitioner's reasons for the allowance of the writ of certiorari.

C

The Questions Presented

(1) Did the trial of this petitioner under indictment #5238 violate and prejudice the rights of this petitioner under the Fifth Amendment of the Constitution of the United States by placing him in jeopardy twice for the same offense?

D

Reasons Relied on for the Allowance of the Writ

(1) In ruling that the trial of petitioner under indictment #5238 did not violate and prejudice his rights under the Fifth Amendment of the Constitution of the United States by placing him in jeopardy twice for the same offense, the Court of Appeals has decided a Federal question in apparent conflict with applicable decisions of this Court, viz:

United States of America, Appellant v. *Jay G. Williams*, 71 Supreme Court 77, 93 Fed. Sup. 922.

The Circuit Court of Appeals also has decided this case in apparent conflict with the reasoning of both the majority and dissenting opinions of the Supreme Court of the United States rendered in the case of *Brock* vs. *State of North Carolina*, 72 S. Ct. 349-358, and the cases cited therein. 344 U. S. 424

Conclusion

The question presented is of grave importance. It presents a case of an offense to fundamental fairness and due process. The facts will bear out that the basis for the motion of the United States District Attorney to dismiss indictment #5136 would at a later date be able to present a stronger case against this petitioner and in fact did so.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said United States Circuit Court of Appeals in the case numbered and entitled on its docket #11736, Criminal, Howard Dortch, Appellant *vs.* United States of America, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and that the judgment of said Court of Appeals be reversed by this Court and your petitioner prays that the certified copy of the record and proceedings of the said United States Court of Appeals for the Sixth Circuit, filed with this petition, may be treated as a return to said writ of certiorari and your petitioner prays that he may have such other and further remedies in the premises as the Court may deem appropriate and in conformity with law.

RODES K. MYERS,
Counsel for Petitioner.

MYERS AND LOGAN,
Of Counsel.

FILED
JUN 8 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. [redacted]76

HOWARD DORTCH,

Petitioner,

vs.

UNITED STATES OF AMERICA

AMENDED PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes the petitioner, Howard Dortch, and asks leave to amend his petition for a Writ of Certiorari and requests that the same be printed as a supplement to the original petition for the reason that through oversight the material and most salient fact was omitted from the petition, either by the dictation thereof or by the typing thereof. This omission occurs on the thirteenth line of page two of the printed original petition.

Said original petition, as amended, should have inserted after the word "Jury" a new paragraph as follows:

That indictment No. 5136, after the hung Jury, as to Dortch, on November 14, 1950, was dismissed by the Court,

but by an Order entered April 10, 1951, and which order is substantiated by the record, is as follows:

"Order—Entered April 10, 1951

This case coming on for trial, the defendant being present by counsel, Hobson L. James, Jr., and Beckham R. Robertson, on motion of the United States Attorney and for the reasons stated by him that this case has been called for trial on three previous occasions, the case having been tried on a fourth occasion, and that trial resulting in a hung jury as to the defendant Howard Dortch, and as further stated by the United States Attorney that the chief witness for the Government had repudiated all statements heretofore made by him involving the defendant Howard Dortch, the witness having stated that he would repudiate said statements if called as a witness,

It is hereby Ordered that this case be and the same hereby is dismissed.

(S.) MAC SWINFORD,
Judge, U. S. District Court."

Such order shows a final dismissal of the case and not a "nolle prosequi". The petitioner could not have been tried under indictment No. 5238 with the same advantage to himself as under indictment No. 5136 which was dismissed by the preceding quoted order. The lapse of time between November 14, 1950, and the date of his trial under indictment No. 5238 (the new indictment) September 17, 1952, or approximately twenty-two months, causes the Petitioner to be confronted by a new and surprise witness, which operated to the Petitioner's disadvantage.

Indictment No. 5238 was returned by a Grand Jury of the Owensboro Division and charged the Petitioner with the identical offense. Petitioner, Dortch, was arraigned under indictment No. 5238 on September 8, 1952, and tried on

September 17, 1952, and was found guilty and his punishment fixed at ten years in the penitentiary.

The Petitioner states that except for this insertion, which was due to oversight, the remainder of the original petition is correct.

RODES K. MYERS,
Counsel for Petitioner.

MYERS AND LOGAN,
Of Counsel.

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